

Message Text

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ACTION ARA-14

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 NSAE-00
NSCE-00 SSO-00 ICAE-00 INRE-00 PM-05 H-01 INR-10
L-03 PA-01 SP-02 SS-15 DLOS-09 EB-08 OES-09 IO-13
HA-05 /108 W

-----125483 062130Z /75

O R 061914Z SEP 78
FM AMEMBASSY SANTIAGO
TO SECSTATE WASHDC 402
INFO AMEMBASSY BRASILIA
AMEMBASSY BUENOS AIRES
AMEMBASSY LIMA
AMEMBASSY LONDON
AMEMBASSY THE HAGUE
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C O N F I D E N T I A L SECTION 1 OF 2 SANTIAGO 6720

E.O. 11652: GDS
TAGS: PBOR, CI, AR
SUBJECT: BEAGLE CHANNEL DISPUTE AND THE LONGER-TERM US INTEREST

1. SUMMARY: ARGENTINA LOST THE BEAGLE CHANNEL ARBITRAL DECISION AND HOPES TO SALVAGE SOMETHING FROM BILATERAL NEGOTIATIONS WITH CHILE. THERE IS SOME RISK OF MILITARY ACTION. THE USG HAS REMAINED VERY QUIET ON THIS SUBJECT IN THE INTEREST OF NOT ADDING TO OUR PRESENT PROBLEMS WITH ARGENTINA AND BECAUSE WE DO NOT WANT TO GIVE THE IMPRESSION OF SUPPORTING THE PINOCHET REGIME, FROM THIS DISTANCE, IT WOULD APPEAR THAT NOT ENOUGH ATTENTION HAS BEEN GIVEN TO THE LONGER-TERM US INTEREST IN UPHOLDING THE RULE OF LAW IN INTERNATIONAL DEALINGS. INFORMATION ON THE ARGENTINE POSITION AND GENERAL US PRACTICE IS REQUESTED.
END SUMMARY.

2. THE BEAGLE DECISION: ON JULY 22, 1971 CHILE AND ARGENTINA SIGNED AN AGREEMENT ("COMPROMISO") TO SUBMIT THE BEAGLE CHANNEL
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DISPUTE TO INTERNATIONAL ARBITRATION. THE AGREEMENT NAMED THE FIVE JUDGES AGREED UPON BY THE TWO PARTIES AND DEFINED THE ISSUE TO BE DECIDED -- IN ESSENCE, HOW IS THE EASTERN PORTION OF THE BEAGLE CHANNEL TO BE DIVIDED BETWEEN THE TWO COUNTRIES AND WHO OWNS PICTON, LENNOX AND NUEVA ISLANDS AND THE ADJACENT ISLETS. ARTICLE XIV OF THE AGREEMENT STATES "THE AWARD SHALL BE LEGALLY BINDING UPON BOTH PARTIES AND THERE SHALL BE NO APPEAL

FROM IT EXCEPT AS PROVIDED IN ARTICLE XIII OF THE TREATY."
THE TREATY REFERERED TO IS THE GENERAL TREATY OF ARBITRATION
OF MAY 1902 BETWEEN THE TWO COUNTRIES. ARTICLE XIII LISTS TWO
GROUNDS FOR NOT CARRYING OUT AN ARBITRAL AWARD: "1) IF THE AWARD
HAS BEEN GIVEN ON THE BASIS OF A DOCUMENT WHICH HAS BEEN FALSIFIED
OR TAMPERED WITH; AND 2) IF THE AWARD HAS BEEN, IN WHOLE OR IN
PART, THE CONSEQUENCE OF AN ERROR OF FACT RESULTING FROM THE
PROCEEDINGS OR DOCUMENTS OF THE CASE."

3. THE DECISION OF THE COURT OF ARBITRATION, COMMUNICATED TO
THE TWO GOVERNMENTS MAY 2, 1977, DIVIDED THE EASTERN PORTION OF
THE BEAGLE CHANNEL BETWEEN ARGENTINA AND CHILE AND AWARDED PICTON,
NUEVA AND LENNOX ISLANDS TO CHILE. ON THE KEY ISSUE THE COURT DECIDED
THAT THE CHILEAN CONTENTION REGARDING THE EASTERNMOST POSITION
OF THE BEAGLE CHANNEL WAS CORRECT WHILE THAT OF ARGENTINA WAS
NOT. THE COURT ORDERED THE PARTIES TO TAKE WHATEVER STEPS
NECESSARY TO CARRY OUT THE DICISION WITHIN A PERIOD OF NINE
MONTHS. CHILE, ALREADY IN POSSESSION OF THE AREAS WHICH
HAD BEEN CONFIRMED TO IT, PROMPTLY INFORMED THE COURT (THROUGH
THE UK GOVERNMENT) OF ITS ACCEPTANCE. THE ARGENTINES DID NOT DO
SO, CHOOSING INSTEAD TO ISSUE ON JANUARY 25, 1978, A DECLARATION
OF NULLITY. THIS DOCUMENT EXPLAINS THE ARGENTINE REFUSAL
TO ACCEPT THE ARBITRATION DECISION ON THE GROUNDS THAT IT DISTORTS
THE ARGENTINE THESIS, THAT OPINIONS ARE EXPRESSED ON QUESTIONS
NOT SUBMITTED TO ARBITRATION, THAT THERE ARE CONTRADICTIONS
IN THE REASONING. THAT THERE ARE FAULTY INTERPRETATIONS, THAT
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THERE ARE GEOGRAPHIC AND HISTORICAL ERRORS, AND THAT THERE IS
A LACK OF BALANCE IN THE APPRAISALS OF ARGUMENTS AND PROOFS
BROUGHT FORWARD BY EACH PARTY.

4. THE CHILEANS IMMEDIATLY REJECTED THE ARGENTINE ACTION AS
"BEING CONTRARY TO INTERANATIONAL LAW AND VIOLATING THE TREATIES
THAT BIND BOTH COUNTRIES." ON MARCH 8, 1978, THE SECRETARY OF
THE COURT OF ARBITRATION INFORMED BOTH PARTIES THAT PRIOR TO
THE EXPIRATION OF THE NINE MONTH PERIOD, CHILEAN ACCEPTANCE
OF THE DECISION HAD BEEN RECEIVED BUT THAT THERE HAD BEEN NO
COMMUNICATION FROM THE GOVERNMENT OF ARGENTINA EITHER ACCEPTING
THE DECISION OR CONTESTING IT ON THE GROUNDS SET FORTH IN ARTICLE
XIII OF THE 1902 TREATY. PARAGRAPH 7 OF THE COMMUNICATION SAYS:
"THE COURT MUST AFFIRM NOT ONLY THAT THE 'COMPROMISO' CONFERS
NO POWER ON EITHER PARTY TO REJECT OR PURPORT TO NULLIFY THE
AWARD, BUT ALSO THAT IN VIEW OF THE CLEAR PROVISIONS OF ARTICLES
XIII AND XIV OF THE 'COMPROMISO,' ANY PRONOUNCEMENTS IN THAT
SENSE MUST THEMSELVES BE REGARDED AS NULLITIES, DEVOID OF
ALL LEGAL FORCE OR EFFECT. THEY ARE NOT CAPABLE OF IMPAIRING
THE VALIDITY OF THE AWARD, WHICH IN CONSEQUENCE REMAINS FULLY
OPERATIVE AND OBLIGATORY IN LAW."

5. ON JULY 10, 1978. THE HEAD OF THE ARBITRATION COURT INFORMED BRITISH FOREIGN SECRETARY DAVID OWEN THAT, SINCE CHILE IS IN POSSESSION OF ALL THE TERRITORIES AWARDED TO IT AND, SINCE ARGENTINA HAS CHOSEN NOT TO CONTEST THE DECISION BY THE MEANS AVAILABLE, THE COURT CONSIDERS ITS WORK DONE AND IS THEREFORE GOING OUT OF EXISTENCE. THIS DECISION WAS COMMUNICATED TO THE CHILEAN AND ARGENTINE GOVERNMENTS AUGUST 8, 1978.

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L-03 PA-01 SP-02 SS-15 DLOS-09 EB-08 OES-09 IO-13
HA-05 /108 W

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FM AMEMBASSY SANTIAGO
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6. THE BASIC ISSUE: IT IS INEVITABLE THAT AN INTERNATIONAL BOUNDARY DISPUTE OF LONG-STANDING SHOULD HAVE PERSUASIVE EVIDENCE ON BOTH SIDES OF THE CASE. HAD THE MATTER BEEN CLEAR-CUT IT WOULD NEVER HAVE COME TO ARBITRATION. THE FACTS ARE THAT IT WENT TO BINDING ARBITRATION OR CONDITIONS AGREED TO BY BOTH SIDES AND THAT THE COURT HANDED DOWN A DECISION WHICH CHILE HAS ACCEPTED AND ARGENTINA HAS NOT CHALLENGED ON THE ONLY GROUNDS THAT WERE LEGALLY AVAILABLE TO IT. THE ISSUE FOR US POLICY IS WHETHER IN THESE CIRCUMSTANCES WE HAVE AN IMPORTANT INTEREST IN SEEING THAT THE ARBITRAL DECISION IS ADHERED TO BY BOTH PARTIES, OR, AT A MINIMUM, IN GOING ON THE RECORD WITH A CLEAR STATEMENT OF SUPPORT FOR SUCH ACCEPTANCE.

7. COMPETING INTERESTS: IN THE CASE OF CHILE THERE IS UNDERSTANDABLE RELUCTANCE TO APPEAR TO SUPPORT A REGIME WHICH HAS BEEN A MAJOR HUMAN RIGHTS VIOLATOR. HUMAN RIGHTS ARE ALSO

AN ISSUE IN OUR RELATIONS WITH ARGENTINA. HOWEVER, THERE IS
SOME REASON TO HOPE THAT ARGENTINE IS NOW MOVING AWAY FROM THE
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WORST FORMS OF HUMAN RIGHTS ABUSES (AS CHILE DID SOMEWHAT EARLIER)
AND US ACTION IN SUPPORT OF THE BEAGLE CHANNEL MIGHT IMPEDE US
EFFORTS TO SPEED THAT IMPROVEMENT. FURTHERMORE, ARGENTINA IS
A LARGER AND MORE IMPORTANT COUNTRY THAN CHILE AND TAKING SIDES
IN SUPPORT OF THE BEAGLE DECISION COULD HAVE LONGER-TERM STRATEGIC
DISADVANTAGES.

8. CONSEQUENCES OF US SUPPORT FOR CHILE IN THE BEAGLE ISSUE.
US SUPPORT FOR THE BEAGLE ARBITRAL DECISION WILL STRENGTHEN
THE RULE OF LAW IN INTERNATIONAL DEALINGS. FAILURE OF THE
USG TO DEFINE ITS POSITION IN THIS INSTANCE WILL WEAKEN OUR POSITION
IN FUTURE SIMILAR SITUATIONS. SECOND, OVERT US SUPPORT FOR THE
ARBITRAL DECISION WILL REDUCE THE POTENTIAL FOR MILITARY ACTION
IN THE SOUTHERN AREA AND MAY IMPROVE PROSPECTS FOR A SUCCESSFUL
CONCLUSION TO THE ONGOING BILATERAL NEGOTIATIONS. ARGENTINA NOW
FEELS LITTLE INTERNATIONAL PRESSURE TO BACK OFF LAND CLAIMS.
CHILE IS WILLING TO COMPROMISE ON THE MARITIME BOUNDARY ISSUE
BUT WILL NOT SURRENDER ISLANDS TO THE SOUTH OF THE BEAGLE CHANNEL.

9. AGAINST THESE GAINS MUST BE WEIGHED NEAR-TERM CONSEQUENCES
FOR OUR BILATERAL INTERESTS VIS-A-VIS CHILE AND ARGENTINA. WITH
RESPECT TO CHILE, THE SHORT-TERM EFFECT OF THE BEAGLE DISPUTE IS
TO STRENGTHEN PINOCHET. WE HAVE HEARD FROM SEVERAL SOURCES
REPORTS THAT THE INNER CIRCLE OF THIS REGIME IS MANIPULATING THE
BEAGLE SITUATION TO MAINTAIN THROUGH WAR HYSTERIS NATIONAL
UNITY, MUCH NEEDED BY PINOCHET TO SURVIVE THE LETELIER EXTRADITION
REQUEST. WHETHER OR NOT THESE REPORTS ARE CORRECT, IT IS CLEAR
TO US THAT THE BEAGLE PROBLEM HAS BEEN A DEFINITE FACTOR FOR
MAINTAINING MILITARY UNITY AND PUBLIC SUPPORT. IF THE SITUATION
DETERIORATES INTO FIGHTING, THE MOST LIKELY CONFRONTATION SCENARIO
IS THAT ARGENTINA WILL SEIZE ONE OF THE SUB-CHANNEL ISLANDS
AND CHILE WILL IMMEDIATELY INVOKE THE RIO TREATY. A LENGTHY
HIATUS WILL ENSUE DURING WHICH PINOCHET WILL BE ABLE TO PRESENT
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HIMSELF AND CHILE AS THE AGGRIEVED PARTY. AT A SECOND AND
SOMEWHAT LONGER-TERM OF LEVEL OF ANALYSIS THE BEAGLE CHANNEL
DISPUTE IS A SOURCE OF WEAKNESS FOR PINOCHET. MANY OF CHILE'S
MILITARY LEADERS MUST REALIZE THAT THE INTERNATIONAL COMMUNITY
WOULD BE MORE WILLING TO SUPPORT CHILE'S POSITION IN THE BEAGLE
DECISION, AND TO RESUME MILITARY ASSISTANCE, IF PINOCHET WERE
REPLACED BY A MORE MODERATE LEADER. AND IF LARGE-SCALE WARFARE

WERE TO DEVELOP BETWEEN ARGENTINA AND CHILE, WITH CHILE ON THE LOSING END, NATIONAL OPINION WOULD PROBABLY COALESCE IN FAVOR OF A CHANGE IN LEADERSHIP -- IN ORDER TO PRESERVE NATIONAL UNITY.

10. THE CONSEQUENCES FOR US/ARGENTINE RELATIONS FROM OVERT SUPPORT FOR CHILE ON THE BEAGLE ISSUE ARE PROBABLY MORE SERIOUS. THIS EMBASSY IS NOT QUALIFIED TO COMMENT ON THEM. IT MAY BE, HOWEVER, THAT AN OBJECTIVE AND LONGER-TERM ANALYSIS WOULD SHOW THAT THEY ARE AT LEAST BALANCED BY OUR INTEREST IN UPHOLDING INTERNATIONAL LEGAL PRINCIPLE.

11. ACTION REQUESTED: A) AMEMBASSY BUENOS AIRES: IS THERE ANYTHING ESSENTIAL OMITTED FROM THIS SUMMARY OF THE LEGAL CIRCUMSTANCES AND STATUS OF THE BEAGLE ARBITRAL DECISION (PARA 2 TO 6 ABOVE)? SPECIFICALLY, WHY DID NOT THE GOA CONTEST THE DECISION ON THE GROUNDS AVAILABLE TO IT UNDER THE 1902 TREATY? B) DEPARTMENT: WHAT HAS BEEN USG PRACTICE IN THE PAST IN SIMILAR CIRCUMSTANCES -- HAVE WE NORMALLY SUPPORTED PUBLICLY THE OUTCOME OF AN INTERNATIONAL ARBITRATION DECISION IN THE WESTERN HEMISPHERE?
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DISPUTES, BEAGLE CHANNEL, WATER BOUNDARIES, INTERNATIONAL ARBITRATION
Control Number: n/a
Copy: SINGLE
Draft Date: 06 sep 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978SANTIA06720
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780363-0640
Format: TEL
From: SANTIAGO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780998/aaaadcvh.tel
Line Count: 245
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: e173fa56-c288-dd11-92da-001cc4696bcc
Office: ACTION ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 01 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1530552
Secure: OPEN
Status: NATIVE
Subject: BEAGLE CHANNEL DISPUTE AND THE LONGER-TERM US INTEREST
TAGS: PBOR, CI, AR
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/e173fa56-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014